704

SUPREME COURT OF THE UNITED STATES.

No. ~~115.~~ 39.

THE UNITED STATES, PLAINTIFF IN ERROR,

VERSUS

JOSEPH NOURSE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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DISTRICT OF COLUMBIA, *sct.*

Style of court. At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the City of Washington, on the fourth Monday of November, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States of America the 58th—

Were present:

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, } *Assis't Judges.*
JAMES S. MORSELL, }

HENRY ASHTON, Esq., *Marshal.*

WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others, are the following, to wit:

THE UNITED STATES, *vs.* JOSEPH NOURSE. } *Parties.*

Be it remembered, that heretofore, to wit, on the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-two, the said United States, by Thomas Swann, esquire, their attorney, issued out of the circuit court here the United States' writ of capias ad respondendum, in the words and figures following, to wit:

"DISTRICT OF COLUMBIA, *to wit:—The United States of America to the Marshal of the District of Columbia, greeting:*

Capias. We command you that you take Joseph Nourse, late of Washington county, if he shall be found within the county of Washington, in your said District, and him safely keep so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the City of Washington, on the first Monday of May next, to answer unto the United States of America in a plea of tresspass on the case, and so forth.

Hereof fail not, at your peril, and have you then and there this writ.

Witness, the honorable William Cranch, chief judge of our said court at the City of Washington, the 14th day of January, Anno Domini one thousand eight hundred and thirty-two.

Issued the 12th day of March, 1832.

(Swann.) WM. BRENT, *Clk.*

And the said United States, by their attorney aforesaid, on the day of prosecuting and suing forth of the writ aforesaid, declared against the said Joseph Nourse, in the plea aforesaid, in form following, to wit:

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Declaration. Joseph Nourse was attached to answer unto the United States of America in a plea of trespass on the case, and so forth.

And whereupon the said United States, by Thomas Swann, their attorney, complain, that, whereas the said defendant, on the first day of August, in the year of our Lord one thousand eight hundred and twenty-nine, at the county aforesaid, was indebted unto the said plaintiffs in the sum of eleven thousand seven hundred and sixty-nine dollars and thirteen cents, current money, for sundry matters and articles properly chargeable in an account, as by a particular account thereof herewith into court exhibited appears; and so being indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook, and faithfully promised to the said plaintiffs to pay them the aforesaid sum of money when he should be thereto afterwards required.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiffs in another sum of eleven thousand seven hundred and sixty-nine dollars and thirteen cents like money, for divers goods, wares, and merchandises by the said plaintiffs before that time sold and delivered to the said

defendant, and at his special instance and request; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs to pay them the last aforesaid sum of money when he should be afterwards thereto required.

And whereas, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, in consideration that the said plaintiffs, at the like instance and request of him the said defendant, had before that time sold and delivered to the said defendant divers other goods, wares, and merchandises, the said defendant undertook and promised to the said plaintiffs to pay them so much money as they therefore reasonably deserved to have, when he, the said defendant, should be thereunto afterwards requested. And the said plaintiffs in fact aver that they therefore reasonably deserved to have of the said defendant another sum of eleven thousand seven hundred and sixty-nine dollars and thirteen cents like money; whereof the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, had notice.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiffs in another sum of eleven thousand seven hundred and sixty-nine dollars and thirteen cents like money, for the like sum of money by the said plaintiffs, and for the use of the said defendant, before that time paid, laid out, and expended, at the special instance and request of the said defendant, and for other money by the said plaintiffs before that time lent and advanced to the said defendant, at the special instance and request of the said defendant, and for other money by the said defendant before that time had, and received to the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money when afterwards he should be thereunto required.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then being in arrear and unpaid; and upon that account the said defendant was then and there found in arrear and indebted to the said plaintifs in a large sum of money, to wit, in the further sum of eleven thousand seven hundred and sixty-nine dollars and thirteen cents like money; and so being found in arrear and indebted to said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs to pay them the said last mentioned sum of money when he should be thereunto afterwards required.

Yet the said defendant, not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtily to deceive and defraud the said plaintiffs in this respect, has not yet paid the said several sums of money, or any part thereof, to the said plaintiffs, (although so to do the said defendant was requested by the said plaintiffs on the same day and year aforesaid, and often afterwards, at the county aforesaid,) but he hath hitherto refused, and still refuses: wherefore, the said plaintiffs say they are injured,

and have sustained damage to the value of twenty thousand dollars current money, and therefore they bring suit, &c.

Pledges, &c. JNO. DOE, and
RD. ROE.

SWANN *for Plaintiffs.*

And the said United States, by their attorney aforesaid, at the time of declaring against the said Joseph Nourse, as above, filed in court here the following account, to wit:

No. 56024.

TREASURY DEPARTMENT,
Auditor's Office, 28th July, 1829.

Treasury transcript. I hereby certify that I have examined and adjusted an account between the United States and Joseph Nourse, late register of the Treasury of the United States, and find that he is chargeable on said account—

To balance due from him on his general or consolidated account, per. report No. 55814, - - - -	$11,769 13
I also find that he is entitled to credit on said account—	
By amount of warrant No. 1, dated 2d July, 1829, in favor of the Treasurer of the United States, being so much repaid by him out of moneys remaining in his hands unexpended, heretofore advanced to him for defraying the expenses of provisional security of the records and buildings of the State and Treasury Departments, - - - -	518 37
Leaving a balance of eleven thousand two hundred and fifty dollars seventy-six cents due to the United States, -	11,250 76
	$11,769 13

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

R. HARRISON, *Auditor.*

To JOSEPH ANDERSON, Esq..
Comptroller of the Treasury of the United States.

COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 29th day of July, 1929.

JOS. ANDERSON, *Comp'r.*

To THOMAS L. SMITH, Esq., *Register.*

TREASURY DEPARTMENT,
Register's Office, March 2d, 1832.

Pursuant to the act of Congress of March 3d, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public money," I, Thomas L. Smith, Register of the Treasury Department, do hereby certify that the aforegoing is a true transcript from the books and proceedings of the Treasury.

T. L. SMITH, *Reg'r.*

Be it remembered, that Thomas L. Smith, esquire, who certified the aforegoing transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that faith and credit are due to his official attestations.

In testimony whereof, I, Louis McLane, Secretary of the Treasury of the United States, have hereunto subscribed my name, and [L. S.] caused to be affixed the seal of this Department, at the City of Washington, this 2d day of March, in the year of our Lord one thousand eight hundred and thirty-two.

LOUIS McLANE.

A copy of said declaration was made out and sent with the writ, to be served on the defendant.

May term, 1832. At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-two, being the day for the return of the writ aforesaid, comes into court here the said United States, by their attorney aforesaid; and the marshal to whom the writ aforesaid, in form aforesaid, was directed, makes return thereof to the court here thus endorsed, to wit: "Cepi copy nar left, H. Ashton, marshal." And the said Joseph Nourse being called, appears in court here by Richard S. Cox, esquire, his attorney; and thereupon, on motion of the said United States, by their attorney aforesaid, it is ruled by the court here that the said Joseph Nourse answer to the declaration aforesaid of the said United States in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said Joseph Nourse, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid of the said United States in the plea aforesaid; and to him it is given—the same day is given to the United States also.

Return of capias.

November term, 1832. At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, come into the circuit court as well the said United States, by their attorney aforesaid, as the said Joseph Nourse, by his attorney aforesaid: thereupon, the said Joseph Nourse, by his attorney aforesaid as before, defends the force and injury when, and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid United States above against him have complained, and of this he puts himself upon the country, and the said United States in like manner, and so forth: therefore, let a jury thereon appear before the court here on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognize, &c. because as well, &c., and the same day is given to the said parties then and there, &c.

Non assumpsit.

Venire facias.

March term, 1833. At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-three, come into the circuit court here as well the said United States, by their attorney aforesaid, as the said Joseph Nourse, by his attorney aforesaid: thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of said parties, by their said attorneys, and by order of the court here thereon, is continued until the fourth Monday of November next.

Nov. term, 1833. And now, to wit: the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-three, come again into the circuit court here as well the said United States, by their attorney aforesaid, as the said Joseph Nourse, by his attorney aforesaid.

Thereupon, the parties aforesaid, by their attorneys aforesaid, file in court here the following agreement, to wit:

Statement of case. "In this case it is agreed that the suit is instituted upon a transcript from the Treasury of the United States, which is annexed to the record in a former proceeding originating in the District court of the District of Columbia, and brought before the Supreme Court by appeal. And it is further agreed that the defendant shall have the same benefit of the proceedings in said case, as if the same had been pleaded, or as if given in evidence upon the trial of the general issues; and upon this statement judgment shall be given as upon a case agreed, and neither party be at liberty to refer to the printed record in said case of Nourse vs. United States, as if the same were fully incorporated into this record. It is therefore consi-

Judgment of court. dered by the court here, that the said United States take nothing by their writ and declaration aforesaid, and that the said Joseph Nourse go thereof without day.

Teste: WM. BRENT, *Clk.*

Certificate of clerk. And whereas, afterwards, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and thirty-four, the said United States by their attorney aforesaid, filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and affect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said supreme court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the public seal of the said circuit court for the county aforesaid, [L. S.] this sixth day of February, in the year of our Lord one thousand eight hundred and thirty-four.

WM. BRENT, *Clk.*

Appeal bond. Know all men by these presents, that we ——— are held and firmly bound unto Joseph Nourse in the full and just sum of two hundred dollars, to be paid to the said Joseph Nourse, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this —— day of February, in the year of our Lord one thousand eight hundred and thirty-four.

Whereas, lately at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit depending in the said circuit court, wherein the United States were plaintiffs, and the said Joseph Nourse was defendant, judgment was rendered against the said plaintiff, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to remove the judgment in the aforesaid suit, and a citation to the said Joseph Nourse directed, citing and admonishing him to be and appear at a Supreme Court of the United States now in session at Washington:

Now, the condition of the above obligation is such, that if the said United States shall prosecute said writ to effect, and answer all damages and cost if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue in law.

Signed, sealed, and delivered in presence of

—— ——, [SEAL.]
—— ——, [SEAL.]

UNITED STATES OF AMERICA, *sct.*:

Writ of error. The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States, plaintiff, and Joseph Nourse, defendant, a manifest error hath happened to the great damage of the said United States, as by their complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf; do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington before the Supreme Court now in session there, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness, the Hon. John Marshall, Chief Judge of said Supreme Court of the United States.

Issued this fourth day of February, 1834.

WM. BRENT,
Clk. of Ct. Ct. of D. C. for Co'ty of Washington.

UNITED STATES OF AMERICA,
District of Columbia, Washington County, } *sct.*:

To Joseph Nourse, greeting:

Citation. You are hereby cited and admonished to be and appear at a Supreme Court of the United States now in session at Washington, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein the United States are plaintiffs, and you are defendant, to show cause, if any there be, why judgment rendered against the said United States, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Hon. William Cranch, chief judge of the circuit court of the District of Columbia, this fourth day of February, 1834.

—— ——, *Chief Judge*

Service acknowledged by Rich'd. S. Coxe, esq., the attorney for the defendant.